

and adding to the yogurt, as is call for by Applicant's claims, results in minimal reaction between the vegetables and yogurt preserving the freshness, taste, and nutritional properties of the cooked vegetables by preventing the fermentation of the cooked vegetables, which results at warm temperatures due to the active cultures found in the yogurt. Applicant's claims 1 – 7, 10, 11 – 15 and 18 further require that the cooked pureed vegetables range from 40 to 60 percent by weight. The weight percent required by applicant's present claims provides a vegetable yogurt having a significant weight percentage of vegetables without the presentation of preservatives or other non-natural additives, thereby yielding a highly nutritional food packed with essential vitamins, minerals, and fibers inherent in the vegetable utilized.

The Examiner has restated the previous rejection set forth in the March 22, 2006 Office Action, rejection claims 1 – 7, 9 – 15, 17, and 18 under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 61231958 to Hara, Japanese Patent No. 55007013 to Kazutada et al., Japanese Patent No. 3112454 to Masahiro et al., and Great Britain Patent No. 2294625 to Oliver. The Examiner has stated that Applicant's amendment to the claims in the Response filed June 26, 2006 are not seen to influence the conclusion of un-patentability previously set forth in Examiner's Office Action dated March 22, 2006. Again, the Examiner has stated that Hara, Kazutada et al., Masahiro et al., and Oliver disclose a yogurt comprising vegetable. (Hara, abstract; Kazutada et al., abstract; Masahiro et al., abstract; and Oliver, especially pages 1 and 3). The Examiner has further stated that the [Applicant's] claims differ as to the recitation of specific cultures and percents. As to specific yogurt cultures, the Examiner has stated that the specific culture required by applicant's claims is notoriously well-known in the art and used for its art-recognized purpose. As to the percents of vegetable to yogurt claimed by Applicant, the

Examiner has stated that, in the absence of showing to the contrary, the amounts claimed are seen to be no more than a matter of choice, dictated by preference, and well-within the skill of the art.

The Examiner has stated that it would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use conventional yogurt cultures and the claimed [vegetable weight] percents in that of Hara, Kazutada et al., Masahiro et al., or Oliver because the use of conventional cultures and preferred [vegetable] amounts is well-within the skill of the art. The Examiner further concluded that once the art has recognized the addition of vegetable products to yogurt, the use and manipulation of types of vegetables and percents employed is merely a matter of choice and well-within the skill of the art. Applicant respectfully disagrees with the Examiner in that the addition of vegetable products to yogurt at Applicant's weight percent is not a matter of choice, but provides a high concentrated nutritional food without the necessary for preservatives which is an unexpected result relative to the prior art teachings.

Moreover, the Examiner has noted that once removed from heat, the cooling process of a vegetable is inherent, and that the immediate cooling of products to prevent overcooking is conventional. Applicant respectfully submits that although cooling of vegetable after cooking may be inherent, the addition of the cooled pureed vegetables to the yogurt to mitigate chemical degradation of the vegetables is not conventional nor taught by any of the prior art references, either alone or in combination.

Neither Hara, Kazutada et al., Masahiro et al., nor Oliver, either alone or in combination, teach or suggest a ready to eat vegetable yogurt calling for 40 to 60 weight percent of cold

pureed cooked vegetables to be added to yogurt as is required by Applicant's claims 1 – 7, 10 – 15, and 18.

Under MPEP 2143 the prior art references must teach or suggest all the claim limitations of Applicant's invention in order to render the invention obvious. Applicant respectfully submits that the references do not teach or suggest a stable yogurt food product having a 40 to 60 weight percent of cold pureed cooked vegetables homogeneously combined with yogurt.

Hara discloses a process for utilizing fermented bean past (MISO) and / or fermented milk product, such as yogurt (NYUFU) as an agent to retard the freeze-denaturation of a food product. In particular, Hara discloses that MISO and / or NYUFU is to be mixed with a food product, such as cereal, potato, cake, bean, fish, shellfish, meat, egg, vegetable, seasoning, cooked food, algae, etc., of the normal state. Hara discloses that 100 pts. food product is mixed with at least 3 pts. of MISO and/ or NYUFU; this pts ratio would result in a pasta-like food product consisting primarily of the food product with a small amount of yogurt, not a ready to eat vegetable yogurt. Moreover, Hara discloses that when a seasoning, such as sugar, oil and fat, or the like, is added to the food product, a mixture of at least 1 pt. of MISO or NYUFU is added to the food product.

The *small amount* of MISO or NYUFU added by Hara acts as an agent to retard the freeze-denaturation of the food product, and the addition of the MISO or NYUFU to the food product does not yield a yogurt comprising vegetables but provides a vegetable food with a small amount of yogurt (100 pts. to ≥ 3 pts.) to retard freeze-denaturation (which typically occurs during the thawing process after a food product undergoes freezing).

Kazutada et al. discloses a process wherein finely cut or ground vegetables, extracts, juices, heated or cooked vegetables are added to yogurt before fermentation. The purpose of the process in Kazutada et al. is to prepare a yogurt containing vegetables having softened fermentation odor and improved flavor, by adding vegetables to the yogurt during the preparation step. (Kazutada et al., abstract). Such a yogurt is said to be obtainable by adding cooked vegetables to the yogurt during the preparation step. The vegetables in Kazutada et al. are added to one or both layers of yogurt and a jelly is prepared using a gelatinizing agent. Vegetable fermentation, as required by the Kazutada et al. process, results in a food product that exhibits properties significantly different from a food product that does not involve vegetable fermentation. Fermentation of the vegetables causes a chemical change therein -- an enzymatic transformation of organic substrates. This chemical change decreases the nutritional properties of the vegetable.

Masahiro et al. discloses a process for formulating a vegetable food product comprising the mixing of vegetables, yogurt and a gelling agent. The Masahiro et al. process provides that the gelling agent may be carrageenan, agar, gelatin, gellan gum, pectin, canthan gum or a mixture thereof. The purpose of the Masahiro et al. invention is to suppress the grassy smell of vegetables and improve the taste and flavor by mixing vegetables, yogurt and a gelling agent.

Oliver discloses a yogurt comprising rosaceous fruit, preferably one or more of apple, pear, plum and / or damson in a concentration of preferably 9 to 31 weight percent. (Oliver, page 2, paragraph 1). Oliver teaches a weight percent of the vegetables (savory flavoring) to be within the range of 12 to 20 weight percent, and in particular 16 weight percent. (Oliver, page 2, paragraph 6; and Oliver, page 3, last line into page 4, paragraph 1). The object of Oliver is to set forth a vegetable type yogurt including the incorporation of rosaceous fruit to act as

preservatives for the yogurt food product.

None of these references teach a ready to eat vegetable yogurt having 40 to 60 weight percent of cold pureed cooked vegetables, as is required by Applicant's claims 1 – 18. In fact, Hara, Kazutada et al., Masahiro et al., and Oliver all tend to teach away from a vegetable yogurt food product having 40 to 60 weight percent of vegetables, as is required by Applicant's claims. The ratio of Hara's food product to MISO or NYUFU yields a food product that is basically a vegetable paste with a small amount of MISO or NYUFU appointed to act as an agent to retard effects of freeze-denaturation, and not a ready to eat vegetable yogurt. Both Kazutada et al. and Masahiro et al. disclose that addition of a gelling agent with a vegetable and yogurt mixture each teaching that the addition of the gelling agent softens fermentation odor and improves flavor (Kazutada et al.) and suppresses the grassy smell of vegetables (Masahiro et al.), respectively. Moreover, Kazutada et al. discloses the addition of vegetables to yogurt during or prior to fermentation; however, vegetable fermentation results in a food product that exhibits properties significantly different from a food product where vegetable fermentation is avoided, as is provided by Applicant's ready to eat vegetable yogurt required by claims 1 – 18. Lastly, Oliver teaches that the addition of rosaceous fruit to flavoring in yogurt after a "surprising finding that adding rosaceous fruit, ..., to the flavoring increases the stability of the flavoring in yogurt." (Oliver, page 1, paragraph 5). The product taught by Oliver provides a 12 to 20 weight percent range for the addition of the vegetable, which is negligible in nutritional value as compared to the 40 to 60 weight percent required by applicant's present claims. Oliver tends to teach away from higher weight percents of vegetable, and instead teaches that a lower weight percent should be used and that, even at the lower weight percent rosaceous fruit must be added to provide stability.

The weight percent of cooked pureed vegetables required by applicant's present claims 1 – 18 is not merely a matter of choice, dictated by preference, but acts to provide an all natural vegetable yogurt product having significant nutritional value; such an all natural nutrient enriched food product has not been accomplished by any of the prior art workers including Hara, Kazutada et al., Masahiro et al., or Oliver. For quite some time the art has struggled to devise an all natural food product combining vegetables with yogurt wherein a significant amount of vegetables are blended with the yogurt with minimal breakdown or depletion of the nutritional properties of the vegetable; yet, up until the time of applicant's invention, no all-natural, ready to eat vegetable yogurt product having cooked pureed vegetables ranging from 40 to 60 percent by weight capable of minimizing nutritional degradation of the nutritional properties of the vegetable has been proposed. The prior art inventions and their attendant disadvantages are discussed at pages 1 – 12 of applicant's specification.

In contrast to the ready-to-eat, vegetable yogurt product disclosed by applicant and defined by applicant's claims, prior art workers, including Hara, Kazutada et al., Masahiro et al., and Oliver, have taught that the combination of yogurts with vegetables produces a food product wherein the vegetables flavor degrades. Such degradation is said to inherently result from degradation of the vegetable. It causes a marked decrease in nutritional values, and yields a commercially unattractive product. (see, for example, Oliver, pg. 1, second paragraph).

Accordingly, reconsideration of the rejection of claims 1 – 18 under 35 USC §103(a) as being unpatentable over Hara, Kazutada et al., Masahiro et al., and/or Oliver is respectfully requested.

Hara, Kazutada et al., Masahiro et al., and Oliver each teach the addition of an agent to a food product having vegetables and yogurt in order to provide the function of stability to the food product; on the other hand Applicant's claims 1 – 18 provide a vegetable yogurt requiring 40 to 60 weight percent of vegetables wherein the vegetables are added to the yogurt in a *cold pureed state* so that stability is achieved, resulting in the elimination of the necessity for the addition of stabilizing agents while at the same time retaining the omitted element's function.

Under MPEP 2144.04 II B, the omission of an element and retention of its function is an indicia of unobviousness. In re Edge, 359 F.2d 896, 149 USPQ 556 (CCPA 1966). In Edge an applicant's claims were directed to a printed sheet having a thin layer of erasable metal bonded directly to a sheet wherein the thin layer obscured the original print until removal by erasing. The prior art in Edge disclosed a similar printed sheet further comprising an intermediate transparent and erasure-proof protecting layer which prevented erasure of the printing when the top layer was erased. The Court in Edge held that although the transparent layer taught by the prior art was eliminated, the function of the transparent layer was retained by the applicant, and therefore the applicant's claims were found to be unobvious. Herein, Hara, Kazutada et al., Masahiro et al., and Oliver each teach the addition of an agent to a food product having vegetables and yogurt in order to provide the function of stability to the food product.

Specifically, Hara discloses the addition of fermented bean past (MISO) and / or fermented milk product, such as yogurt (NYUFU), to a food product (such as vegetable), in a ratio of ~3pts. MISO / NYUFU to 100pts. food product so that the MISO/NYUFU acts as an agent to retard the freeze-denaturation of the food product. Kazutada et al. discloses a process

wherein finely cut or ground vegetables, extracts, juices, *heated or cooked vegetables* are added to yogurt *before* fermentation and a gelatinizing agent is added, wherein the addition before fermentation and the gelatinizing agent are added in order to provide stabilization to the vegetables via soften fermentation odor and improved flavor. Masahiro et al. discloses a process for formulating a vegetable food product comprising the mixing of vegetables, yogurt and a gelling agent appointed to suppress the grassy smell of vegetables and improve the taste and flavor. While Oliver discloses a vegetable type yogurt wherein rosaceous fruit, 9 to 31 weight percent, is added as a stabilizing agent acting as a preservative for the yogurt food product.

Like in Edge, Applicant's claims 1 – 18 provide a vegetable yogurt that omits an element of the prior art references, while at the same time retaining the element's function, and therefore Applicant respectfully submits that Applicant's claims 1 – 18 be deemed unobvious by the Examiner. That is to say, Applicant's claims 1 – 18 require a vegetable yogurt having 40 to 60 weight percent of vegetables wherein the vegetables are added to the yogurt in a cold pureed state so that the function of stability is achieved while the stabilizing agents taught by Hara, Kazutada et al., Masahiro et al., and Oliver are omitted. Thus Applicant's claimed invention provides for the omission of the stabilizing agent, while at the same time provides for the retention of the stabilizing agent's function which is achieved by adding the vegetables in a cold pureed state.

The addition of a sizeable weight percentage of pureed vegetables, as called for by applicant's present claims 1 – 18, is carried out under cold conditions (i.e. the pureed, cooked vegetables are cold at time of blending) so that degradation of the vegetable's nutrients is minimized. The addition of cold pureed vegetables to a yogurt is not taught or suggested by the

prior art workers, including Hara, Kazutada et al., Masahiro et al., or Oliver. Moreover, the addition of cold pureed vegetables in amounts ranging between 40 to 60 weight percent is not disclosed or suggested by any prior art worker, including Hara, Kazutada et al., Masahiro et al., or Oliver.


Rather, the prior art teachings, including Hara, Kazutada et al., Masahiro et al., or Oliver suggest that preservatives and the like (rosaceous fruit; jellies; etc.) must be added to vegetable yogurt preparations in order to stabilize the flavoring. None of the prior art references, including Hara, Kazutada et al., Masahiro et al., or Oliver teach a ready to eat vegetable yogurt that utilizes as high as 40 to 60 weight percent of cold vegetables without the addition of preservatives and the like. Clearly, such a sizeable addition of cold pureed vegetable is a not merely a matter of choice. For the amount of vegetable required by Applicant's claims 1-18 and the requirement that the vegetables be added in a cold pureed state constitute critical features that result in a highly nutritional food product that is nutritionally stable and viable without the need for the addition of stabilizing agents.

Accordingly, reconsideration of the rejection of claims 1 – 18 under 35 USC §103(a) as being unpatentable over the combination of Hara, Kazutada et al., Masahiro et al., and/or Oliver is respectfully requested.

CONCLUSION

In view of the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the Rejection, entry of this amendment, and the allowance of claims 1 – 18 are earnestly solicited.

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